

Explanation of Changes Reflected in the Chairman's Amendment in the Nature of a Substitute

(Compared with H.R. 284, Medicare DMEPOS Competitive Bidding Act of 2015, as introduced)

February 26, 2015

The Chairman's amendment in the nature of a substitute modifies H.R. 284.

Page 2: Line 11. Strike "State Licensure". Lines 18-21. Strike "(i) the entity meets applicable State licensure requirements for such area for all items in such bid for a product category; and". These changes reflect that the statutory requirement that entities meet applicable State licensure requirements is moved to a new section (b).

Page 2: Lines 14-17. Strike "on or after the date of enactment of this subparagraph, the Secretary may not accept a bid from an entity for an" and add "for contracts beginning not earlier than January 1, 2017 and not later than January 1, 2019, an entity may not submit a bid for a competitive acquisition". This change ensures that the Secretary has sufficient time to implement the new requirements and educate bidding entities on how to meet them and refrains from requiring the Secretary to review bids submitted by an entity in an inefficient manner.

Page 3: Line 3. Strike "such area" and add "competitive acquisition area in which the entity submits a bid". This change clarifies the intent that a bidding entity must obtain a bid bond for each geographic area in which it submits a bid for one or more products.

Page 3: Line 6-10. Strike "successful bidders that" and add "bidders that submit bids at or below the median and are offered but".

Page 3: Line 9. Strike "an area for a product category" and add "if any product category for a competitive acquisition area, if".

Page 3: Line 10. Add "bid for such product category and area was" and strike "bid".

Page 3: Line 11-15. Strike "product category's", strike "the area and" and add "all bidding entities included in the calculation of the single payment amounts for such product category and areas, and".

Page 3: Line 23. Add "by such entity for such area".

Page 3: Lines 19-24. Strike "(II) is above the median composite bid and the entity chooses not to accept a contract for the product category, the bid bond submitted shall be returned within 90 days of the notice of nonacceptance".

Page 4: Line 1-6. Strike "For losing bidders. If a bidding entity submits a bid that is not accepted for an". Add "(ii) Treat of other bidders—In the case of a bidding entity that is offered a contract for any product category for a competitive acquisition area, if the entity

does not meet the bid forfeiture conditions in subclauses (I) and (II) of clause (i) for any product category for such”. Strike “for the” and add “by such”. Strike “date of notice of noncompliance” and add “public announcement of the contract suppliers for such area.”

These changes clarify the intent of the legislation by: making the terminology more consistent with that which is used in the statutory language it is amending; specifying that the bidding entity forfeits its bid bond if it declines a contract for any product category in a competitive acquisition geographic area; and streamlining the language by capturing all of the scenarios in which a bidding entity does not forfeit its bid bond in one clause.

Page 4: Line 6. Add the following:

“(b) State Licensure.—

(1) In general.—Section 1847(b)(2)(A) of the Social Security Act (42 U.S.C. 1395w–3(b)(2)(A)) is amended by adding at the end the following new clause:

“(v) The entity meets applicable State licensure requirements.”.

(2) Construction.—Nothing in the amendment made by paragraph (1) shall be construed as affecting the authority of the Secretary of Health and Human Services to require State licensure of an entity under the Medicare competitive acquisition program under section 1847 of the Social Security Act (42 U.S.C. 1395w–3) before the date of the enactment of this Act.

(c) GAO Report on Bid Bond Impact on Small Suppliers.—

(1) Study.—The Comptroller General of the United States shall conduct a study that evaluates the effect of the bid surety bond requirement under the amendment made by subsection (a) on the participation of small suppliers in the Medicare DMEPOS competitive acquisition program under section 1847 of the Social Security Act (42 U.S.C. 1395w–3).

(2) Report.—Not later than 6 months after the date contracts are first awarded subject to such bid surety bond requirement, the Comptroller General shall submit to Congress a report on the study conducted under paragraph (1). Such report shall include recommendations for changes in such requirement in order to ensure robust participation by legitimate small suppliers in the Medicare DMEPOS competition acquisition program.”

This change codifies the current regulatory requirement maintained by the Secretary that a bidding entity must meet applicable state licensure requirements without impeding the Secretary’s ability to continue to impose that requirement prior to the statutory effective date. Additionally, this change mandates a Government Accountability Office report to determine if the bid bond requirement has a disproportional effect on small suppliers and to compel remedies if such effect exists.